

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

CV 15-1183 KG/WPL
CR 4-1746 KG

PATRICK JAMES PACHECO,

Defendant/Movant.

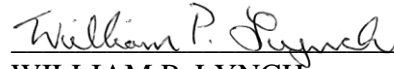
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

Patrick James Pacheco filed a Motion to Correct Sentence Pursuant to 28 U.S.C. § 2255 (CV Doc. 1; CR Doc. 40).¹ He challenges the validity of his sentence on the basis that he was unconstitutionally sentenced under the residual clause of the Armed Career Criminal Act, 18 U.S.C. § 924(e), which was found to be unconstitutionally vague in *Johnson v. United States*, --- U.S. ---, 135 S. Ct. 2551, 2563 (2015). The United States stipulates (*see* Doc. 6 at 3), and I agree, that *Johnson* applies retroactively to Pacheco's case as a new substantive rule pursuant to *Schriro v. Summerlin*, 542 U.S. 348, 352 (2004), and *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987).

I conclude that Pacheco is entitled to resentencing based on *Johnson*. I recommend that the Court grant Pacheco's motion, vacate Pacheco's sentence, order that a new presentence report be prepared, and set this case for resentencing.

¹ All citations to "CV Doc." refer to documents filed in the civil case, CV 15-1183 KG/WPL. All citations to "CR Doc." refer to documents filed in the criminal case, CR 4-1746 KG. Documents filed in both cases are cited by reference to the corresponding document in the civil case.

THE PARTIES ARE NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the Proposed Findings and Recommended Disposition. If no objections are filed, no appellate review will be allowed.**



WILLIAM P. LYNCH
UNITED STATES MAGISTRATE JUDGE

A true copy of this order was served
on the date of entry--via mail or electronic
means--to counsel of record and any pro se
party as they are shown on the Court's docket.